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ABSTRACT

State litigation involving unconstitutional school financing systems are described in this document, which focuses on efforts in Texas to reform the financing of public education. Since its school finance system was declared unconstitutional in 1987, two subsequent proposals have been struck down by the Texas Supreme Court for the following reasons: (1) the proposals relied too heavily on local property taxes; and (2) a county education district plan essentially created a statewide property tax, which was against Texas law. The efforts of state lawmakers in Kentucky and New Jersey are also described. A conclusion is that states' school financing conflicts are far from over. In the majority of school finance litigation cases, the common thread is the focus on equitable resources for all schools. Additionally, courts have been asked to determine the basis of an adequate system of financing public education. Two maps that depict the legal status of states' education finance systems are included. (Contains 16 references.) (LMI)

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LESSONS IN SCHOOL FUNDING

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LESSONS IN SCHOOL FUNDING

INTRODUCTION

In education financing, Texas has become a fine example of how not to do it. Edgewood vs. Kirby, a derivative of Rodriguez vs. San Antonio Independent School District (I.S.D.) which has lingered on for some two decades, has not been fully settled by either the Texas courts, lawmakers or former governors.

THE TEXAS CRISIS

The most recent act in the Texas education saga opened in 1987 when a Texas District Court ruled in favor of the plaintiffs, Edgewood Independent School District (ISD) and other property-poor school districts, declaring the state's financing system unconstitutional. Although, with an extension, the court gave legislators about one and a half years to act, the case went back to court where, in 1988, the Third Court of Appeals reversed and ruled in favor of the state. It stated that to judge the system on the Texas Constitution was a political matter which lawmakers must confront themselves. In essence, it gave the Legislature an open ticket to do nothing or everything. One year later, the original plaintiffs appealed the case to its inevitable climax, the Texas Supreme Court, which ruled unanimously that a part of the state's educational financing system was unconstitutional as based on the Texas Constitution. This court held the state responsible for ensuring that revenues be only "substantially equal" at similar levels of district tax effort, differing from the District Court's ruling that the system must be equal dollar-for-dollar. It said that "a band-aid [solution] will not suffice," meaning that a major overhaul was needed, rather than merely pumping more funds into an unconstitutional financing system.

But the story was far from over. The court gave legislators seven months (from October 1989 to May 1990) to devise a new system. However, Texas policymakers faced difficult budget times, a governor who both refused to raise taxes as well as place education as a major priority, upcoming local elections with political pressures pushing for more results with less money, and a court system which had proven lax on injunction deadlines.

On May 1, 1990, the date of the original injunction, the Supreme Court again extended the deadline by one month, understanding that the lawmakers were working toward a new plan. It also appointed a court marshall to draw up an optional system, with already existing revenues, to be invoked if lawmakers failed to meet the deadline. On June 6, during the fourth special session on the issue, the Legislature passed Senate Bill I, which would increase a few taxes on various goods to raise some $3.5 billion in new financing over five years and to continue distribution of state funds under essentially the same system.

The bill went to the District Court for a ruling on its constitutionality. In what was now known as Edgewood Round II, the District Court struck down the bill on September 24, 1990, but allowed it to remain in force temporarily for the already-begun school year, and gave legislators 11 months to enact an efficient system. The decision was appealed directly to the Texas Supreme Court which, on January 22, 1991, affirmed that the bill was unconstitutional, and lengthened the lower court's deadline for enactment of a constitutional system of school financing to April 1, 1991, or slightly over two months. The court stated, "To be efficient, a funding system that is so dependent on local ad valorem property taxes must draw revenue from all property at a substantially similar rate." One month later, in a rehearing and first split decision in the Edgewood case, the court clarified its position by saying that the current heavy reliance on local property tax made the system unconstitutional, not the fact that any localized enrichments were used at all.

There was one month left before the new deadline. Texas lawmakers had been bounced from the District Court's stance that any local enrichment was illegal, to the Supreme Court's statement that some enrichment was permissible. The high court went so far as to state two possible options which policymakers might follow: "We do not prescribe the means which the Legislature must employ in fulfilling its duty, [but] consolidation of school districts is one available avenue toward greater efficiency in our school finance system, [and] another approach to efficiency is tax base consolidation."

Opting for a form of the latter, in the spring of 1991, the Legislature passed Senate Bill 351 to equalize taxation efforts within each county in Texas by creating "county education districts" (CEDs) to finance the state's basic foundation program. The bill became effective on September 1 and, like S.B. 1, will hold for the school year regardless of its constitutionality. Many people involved with Edgewood believe the bill to be unconstitutional because they see the taxing districts serving as little more than glorified state income tax zones. Texas is one of only seven states that doesn't have a state income tax. Although the original plaintiffs in the case primarily support the bill except for the fact that it does nothing to ensure equal funds for facilities, they have asked the District Court to delay hearings until actual appropriations have been made. However, on June 17 over 50 property-wealthy districts filed suit challenging the constitutionality of the new system. On August 7 District Court Judge F. Scott McCown declared that the CEDs created by S.B. 351, and the tax they will levy, are constitutional. In an order of severance issued concurrently with the opinion, McCown wrote, "The county education districts created by S.B. 351 are a valid exercise of the Legislature's power to provide for the formation of school districts by general law, and the direction contained within S.B. 351 to the trustees of those districts to levy taxes sufficient to raise their local school share for the public schools is a valid exercise of the Legislature's authority to pass laws for the assessment and collection of taxes within school districts, and these are not state ad valorem taxes." However, he also warned the Legislature that for the rest of S.B. 351 to be equitable, "it must be funded."

Fittingly, the melodrama that is Texas school finance does not end here. Judge McCown has ruled that additional claims raised by the plaintiffs and plaintiff-intervenors would be decided separately from the August 7 decision. "Chief among the issues yet to be decided, in addition to full funding and adequacy, are the implications of the absence of a facilities allotment in Tier 1 of the school finance system as well as the effects of imposing the program revenue cap ordered in S.B. 351."

On January 30, 1992, the state Supreme Court struck down as unconstitutional the state's county education district plan by a 7-2 vote, saying that it effectively created a statewide property tax. About 50 school districts had challenged the law, with numerous businesses also filing suit. In a somewhat surprising move, the court gave the state Legislature until June 1993 to come up with a better funding plan, allowing the unconstitutional tax to stay in place for the remainder of this school year as well as the next. This could open a pandora's box of litigation by individual citizens and businesses who are being required to pay an unconstitutional tax this year and an escalating tax in 1993. According to the Legislature's plan, a minimum local property tax rate of 72 cents per $100 of assessed valuation will rise to 82 cents during the 1992-1993 school year. By setting the range for property tax rates and predetermining its uses, the tax effectively was a state property tax, forbidden by the state constitution. To adopt such a tax would require voters to amend the constitution, the court said in its opinion. The ruling marks the third time since 1989 that the state Supreme Court has rejected a school finance plan. Until the Legislature is able to draft a plan which can pass constitutional muster, only time will tell what's in store for Texas education.

OTHER EXAMPLES

Texas lawmakers are not alone in dealing with an unconstitutional school financing system. Since the 1973 U.S. Supreme Court ruling in Rodriguez that a state's education financing system must be judged on the individual state's constitution, not the U.S. Constitution, legal action on the issue has flourished. To date, 10 states have seen their education financing system declared unconstitutional in court, and lawsuits are currently pending in 19 states. An argument can be made that the strength of legislative response is often in direct correlation to the severity of the state court's demands. While Texas lawmakers still continue to correct their system to meet the minimal requirements of the court, legislators in several other states with funding systems struck down at about the same time have approached the situation less as a problem and more as an opportunity to enact innovative legislation. Two strong examples of how legislatures responded to court demands are New Jersey, which reacted quickly to judicial pressures yet, later, somewhat retracted proposed reforms, and Kentucky, which fully and efficiently met the stringent court mandates.

KENTUCKY

In Rose vs. The Council, 1989, just months before the Texas decision, the Kentucky Supreme Court struck down the state's education financing system in its entirety. Taking the strictest stance to date, the court called the state's system inefficient, unequal, not uniform, inadequate and underfunded. The court said, "It is crystal clear that the General Assembly has fallen short of its duty to enact legislation to provide for an efficient system of common schools throughout the state... Kentucky's children, simply because of their place of residence, are offered a virtual hodgepodge of educational opportunities." Falling one step short of prescribing policy, Kentucky Supreme Court judges emphasized that "we simply take the plain directive of the Constitution, and, armed with its purpose, we decide what our General Assembly must achieve in complying with its solemn constitutional duty." As for setting specific goals, the court told legislators that if ad valorem taxes are used, property must be taxed at 100 percent of fair market value, and that the tax rates from district to district must be uniform, although local taxes may be used as a supplement rather than, as before, as a base. "Lest there be any doubt, the result of our decision is that Kentucky's entire system of common schools is unconstitutional."

In a sort of constitutional straightjacket, the Kentucky legislature nine months later responded positively with what experts have cited as one of the most comprehensive education reform bills ever. Lawmakers met with consultants from other states and produced the Kentucky Education Reform Act of 1990, a system that has been called everything from "required reading in education circles" and "a national model" to "fascinating," even "pioneering." The system includes more local control, anti-nepotism protection, and financial rewards or incentives based on accountability, as well as ungraded K-4th grade classes and community social service centers. In essence, it incorporates a plethora of school reform suggestions which have been on the workbench throughout the country for years. The Kentucky Supreme Court called for strict reforms and the legislature responded accordingly.

NEW JERSEY

New Jersey's school finance time-line looks similar to that of Texas, but its most recent legislative response to court mandates falls closer to Kentucky's. The New Jersey Supreme Court in Abbott vs. Burke, 1990, struck down parts of the state school financing system one year after the Kentucky decision. Similar to Texas' on-going court battles, Abbott was a close cousin to a case in 1973, Robinson vs. Cahill, in which the New Jersey

Supreme Court declared the state responsible for establishing and maintaining a "thorough and efficient" system for funding education, as directed by the education article of the state constitution. Under the Public School Education Act of 1975, declared constitutional in 1976, the Legislature changed the system. However, in 1981, 28 districts on behalf of poor, urban school children in the Abbott case filed suit challenging the implementation of the system as it applied to their districts. Fifteen years after the system was enacted, nine years after the Abbott case was filed, and 17 years after the Robinson decision, the New Jersey Court ruled in favor of plaintiffs saying, "We hold the act unconstitutional as applied to poorer urban school districts. Education has failed there, for both the students and the state." The court ruled unanimously that "the [1975] act must be amended...so as to assure that poorer urban districts' educational funding must be certain, every year...[and] must be adequate." It also declared unconstitutional the state's minimal aid program, a flat amount which all districts receive with no consideration as to wealth. The court added that while rich districts may spend more for education, it is the state's duty, in turn, to increase funding to allow poorer ones to keep up.

Interestingly, one week prior to the final court decision, Governor James J. Florio introduced a comprehensive school finance reform package. Apparently satisfied with the ruling and the timing of his proposal for reform, the governor remarked, "Overall, I think our proposal gets an A from the Supreme Court." However, the plan did not receive an A from many educators. Under Florio's plan the new finance system called for increasing state aid to schools by $970 million and funnelling more money to poor urban districts. At the same time the proposal would have cut state funding to more than 200 largely suburban districts that would see their main form of state aid eventually eliminated. There were other problems arising from the Florio proposal, the most notable being the shift of responsibility for teacher pensions from the state to local districts. Predictably, Betty Kraemer, president of the New Jersey Education Association, termed the plan "intolerable." The Legislature later increased the governor's bill to $1.3 billion and passed it in 1990. The resulting measure, called the Quality Education Act, sought to generate the $1.3 billion in new money by increasing the state sales and income taxes. However, in March 1991, bowing to public upheaval, Florio and the then-Democratic controlled Legislature agreed to shift $360 million of QEA money to property tax relief. The story doesn't end here. The plaintiffs legal counsel, The Education Law Center, filed a motion with the State Supreme Court in June urging the court to overturn the QEA law in light of the shift in property tax relief. Furthermore, the lawyers asked the court to order Governor Florio and the Legislature to come up with a new plan by December 31 to close what they described as a widening gap in spending between poorer urban school districts and affluent, suburban ones. If the deadline was not met, the lawsuit argued, the court should take direct action to equalize school funding.

The fallout from the QEA proposals was reflected in the November 1991 elections, in which all 120 seats in the General Assembly were up for grabs. The result was a public backlash at Florio and the Democrats. Going into the election, Democrats held a 23-17 advantage in the Senate and a 43-37 advantage in the Assembly. The election drastically changed the power base by electing Republicans in record numbers: 27-13 in the Senate and 58-22 in the Assembly, thus providing a "veto-proof" margin for the now Republican-controlled Legislature.

While the Kentucky reforms centered on curriculum and accountability, the New Jersey Legislature focused its energy on revamping the state equalization formula itself. Specifically, the new system eliminates the minimal aid program; excludes teachers' pension funds from equalization; caps local enrichment efforts; revises the funding formula to, among other things, equalize state aid for schools needing to provide special services such as bilingual education; and incorporates personal income as well as property value in

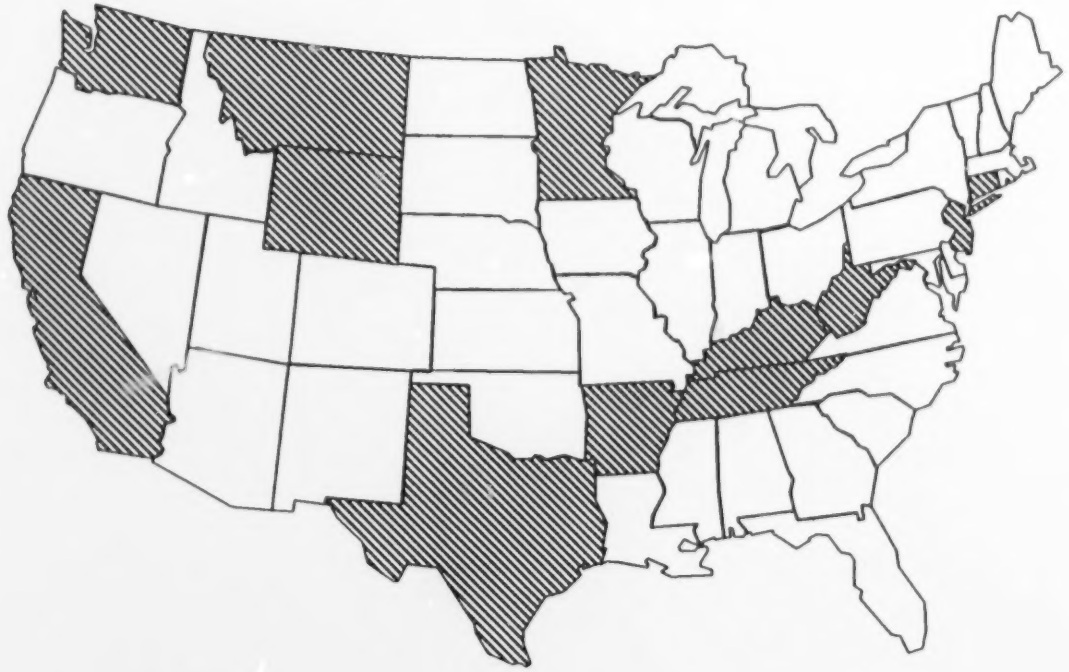
calculations of local ability to pay. Essentially, the school finance reform initiative concentrated on an extensive overhaul of the distribution of funds as well as substantive tax increases to raise more money. Nearly 70 percent of these new funds were designated for the 28 urban school districts from Abbott.

SUMMARY

States' school financing battles are far from over. The issue is timely, and state courts as well as legislatures have been active. From the examples of Texas, New Jersey and Kentucky, legislators can learn from the mistakes and triumphs of others in attempting to achieve equitable, constitutional systems for financing education. But, of course, change is never easy, and the most important component to instituting an effective system is the desire for change itself.

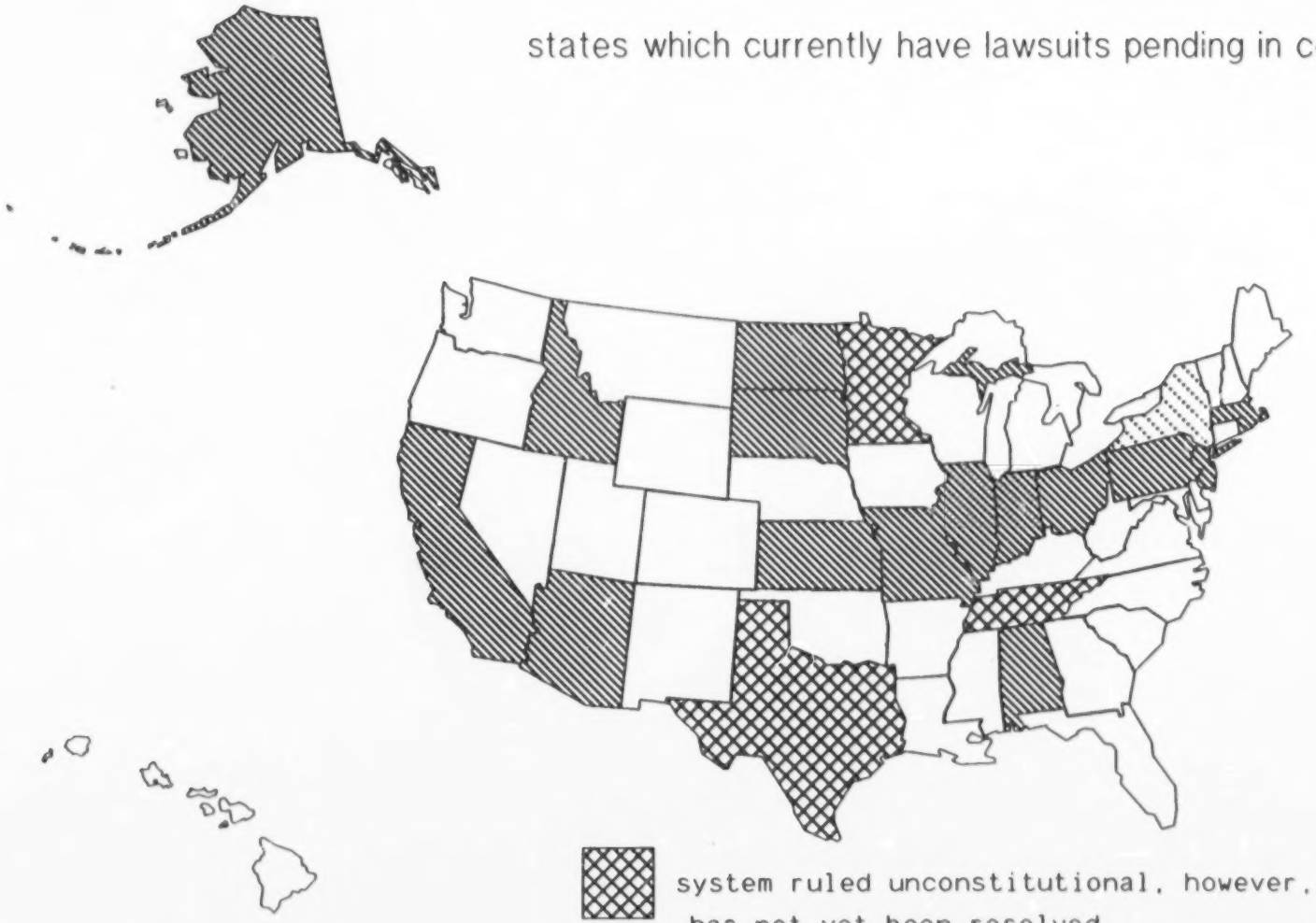
The past year saw state supreme courts uphold the finance system in Oregon while overturning the systems in Tennessee and Minnesota. In the majority of these school finance litigation cases the common thread is the focus on equitable resources for all schools. Additionally, courts have been asked to determine what is the basis of an adequate system of financing public education. While the courts and legislatures continue to try and resolve these issues over time, the children are waiting.

states that have had their education financing system declared unconstitutional since the 1973 Rodriguez decision



Note: some states have had their finance system ruled unconstitutional more than once.

states which currently have lawsuits pending in court



system ruled unconstitutional, however, suit has not yet been resolved

New York State Court of Appeals upheld lower court ruling, dismissing plaintiff district's suit

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